

31A-5-204 Organization permit -- Certificate of incorporation.

- (1) Subject to Section 31A-5-213, a person, including a stock insurance corporation, insurance holding company, stock corporation to finance an insurer or insurance production for an insurer, corporation to provide management or administrative services for any of the entities named above, or mutual insurer, may not solicit subscriptions for its securities, or in the case of a mutual insurance corporation, solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes, until the commissioner has issued an organization permit.
- (2) The application for an organization permit shall give the name of the insurer to be formed and shall be signed and acknowledged by or on behalf of each incorporator. The application shall include or have attached:
 - (a) the names, and for the preceding 10 years all addresses, and all occupations of the incorporators and the proposed directors and officers;
 - (b) for all persons planned by the incorporators to own 10% or more of the capital stock of the corporation, their annual financial statements and reports for the three most recent years, and if the planned shareholders are corporations, their articles and bylaws, and a list of the names, addresses, and occupations of all their directors and principal officers;
 - (c) the proposed articles, which shall be signed and acknowledged by or on behalf of each incorporator, and the proposed bylaws;
 - (d) all agreements relating to the corporation to which any incorporator, proposed director, or officer is a party;
 - (e) the amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons;
 - (f) the plan for solicitation of applications for qualifying insurance policies and for the corporation's securities;
 - (g) the forms to be used for stock subscriptions, certificates for shares, applications for qualifying insurance policies, subscriptions for mutual bonds and contribution notes, and the forms for bonds and notes;
 - (h) the capital and initial paid in surplus in the case of a stock insurer, or the minimum permanent surplus and the additional surplus in the case of a mutual insurer;
 - (i) the plan for conducting the insurance business, including:
 - (i) the geographical area in which business is intended to be done in the first two years;
 - (ii) the types of insurance intended to be written in the first two years;
 - (iii) the proposed marketing methods;
 - (iv) when requested by the commissioner, the proposed method for establishing premium rates; and
 - (v) the proposed aggregate compensation of the five highest compensated officers, directors, and employees;
 - (j) a projection certified by a member of the American Academy of Actuaries of the anticipated operating results of the corporation at the end of each of the first two years of operation, based on reasonable assumptions of loss experience, premium and other income, operating expenses, and acquisition costs; and
 - (k) any other relevant document or information the commissioner reasonably requires.
- (3) The commissioner shall issue an organization permit if:
 - (a) all the requirements of law have been met, including the payment of fees;
 - (b) all the incorporators, persons listed in Subsection (2)(b), and the proposed directors and officers of the corporation being formed, are trustworthy and collectively have the competence and experience to engage in the particular insurance business proposed;

- (c) the business plan is consistent with the interests of the corporation's potential insureds and the public; and
 - (d) the bond required by Section 31A-5-205 is filed.
- (4) If the commissioner denies the application for a permit, the commissioner shall state the reasons for the denial.
- (5)
- (a) The organization permit shall:
 - (i) specify the minimum capital or minimum permanent surplus required under Section 31A-5-211; and
 - (ii) describe the securities or policies to be solicited under the permit.
 - (b) The organization permit may contain any other information the commissioner considers necessary.
- (6) The director of the Division of Corporations and Commercial Code shall accept the filing of the corporation's articles of incorporation upon notice from the insurance commissioner that all the applicable requirements of law have been met, including the payment of fees.
- (7)
- (a) When the director of the Division of Corporations and Commercial Code accepts the articles of incorporation:
 - (i) the legal existence of the corporation begins;
 - (ii) the articles and bylaws become effective; and
 - (iii) the proposed directors and officers take office.
 - (b) The certificate is conclusive evidence of compliance with this section, except in a proceeding by the state against the corporation.
- (8) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the permit applicant may request that any part of the information supplied under Subsection (2) be kept confidential. The information shall then be kept confidential unless the commissioner expressly finds, after a hearing, that the interest of the corporation or the public requires that the information be open to the public.

Amended by Chapter 382, 2008 General Session